



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 20th day of February, 1996

Millon Air, Inc.

**Enforcement Proceeding
Violations of 49 U.S.C. §41101
and 14 CFR Part 207**

Docket OST 95-947

CONSENT ORDER

This consent order concerns violations of the Department requirements for approval of long-term wet leases under 14 CFR 207.10 by Millon Air, Inc. (Millon). This order directs Millon to cease and desist from future violations and to pay compromise civil penalties.

As a U.S. air carrier, Millon is subject to the Department's regulations for long-term wet leases embodied in 14 CFR Part 207. Section 207.10 (14 CFR 207.10) requires that air carriers receive a statement of authorization prior to performing any flights under a long-term wet lease with a foreign carrier. Section 207.1 defines a long-term wet lease as a lease under which the lessor provides both an aircraft and its crew for a term that "either (a) lasts more than 60 days, or (b) is part of a series of such leases that amounts to a continuing arrangement lasting more than 60 days."¹ Violations of Part 207 also constitute violations of the requirement under 49 U.S.C. §41101 that a carrier hold certificate authority prior to engaging in air transportation.

Between July 1994 and June 1995, Millon operated a series of flights on behalf of Lineas Aereas Mayas, S.A. (LAMSA), primarily between Miami and points in Guatemala. Although the service was performed pursuant to individual charter agreements for each flight, the Enforcement Office took the position in a Notice of Enforcement Proceeding and Complaint filed on December 19, 1995, that the number of flights over the course of a year indicate that the two companies had entered into an arrangement tantamount to a long-term wet lease requiring approval under section 207.10. Millon, however, did not apply for

¹ The Department provided additional guidance on wet lease requirements (see February 9, 1994, notice from Paul L. Gretch, Director, Office of International Aviation).

approval of a long-term wet lease with LAMSA until May 11, 1995; the Department issued a statement of authorization approving the agreement on June 6, 1995.

In mitigation, Millon states that it submitted an answer in this docket denying allegations of the Complaint, stating that the company's conduct was in conformity with the Department's rules and regulations, and interpretations thereof. Millon Air further asserts that compliance with 14 CFR 207.10 was impossible because of its vagueness, and, therefore, the rule is in contravention of the Fifth Amendment to the U.S. Constitution. Millon Air states that at all times the company has acted according to accepted industry standards and in good faith in the belief that it was in compliance with the Department's rules and regulations, and any conduct which diverged from that required by the Department resulted from misunderstanding rather than through intent on Millon Air's part to circumvent or disregard the Department's rules.

The Enforcement Office has considered the information and arguments presented by Millon but continues to believe that enforcement action is warranted. In its view, the wet lease provisions in Part 207 are clear and are intended to provide flexibility to U.S. carriers leasing to foreign carriers, without allowing a U.S. carrier to operate a major portion of a foreign carrier's service absent Department approval. According to the Enforcement Office, whenever operations on behalf of a foreign carrier are regular and continuous, as they were here, the prior approval requirements of Part 207 are applicable.

The Enforcement Office and Millon have reached a settlement of this matter. In order to avoid litigation, and without admitting or denying the violations described above, Millon consents to the issuance of an order to cease and desist from future violations of section 207.10 of the Department's regulations (14 CFR 207.10) and to the assessment of \$60,000 in compromise of potential civil penalties otherwise assessable under the provisions of 49 U.S.C. §46301. Of this amount, \$20,000 shall be paid according to the schedule set forth below. The remaining \$40,000 shall be suspended for one year following the service date of this order and shall be forgiven unless Millon fails to comply with the payment provisions of this order or commits other violations of 49 U.S.C. §41101, 14 CFR Part 207, or this order during the year following issuance of this order, in which case the entire unpaid portion of the \$60,000 assessed penalty shall become due and payable immediately. The Enforcement Office believes that the civil penalty assessment in this instance is warranted in light of the nature and extent of the activities in question and the mitigation presented. This order and the penalty it assesses will provide an incentive to air carriers to comply fully with the requirements of 49 U.S.C. §41101 and Part 207 in the future.

This order is issued under authority assigned in 14 CFR 385.11(d).

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as in the public interest;
2. We find that Millon Air, Inc., violated 49 U.S.C. §41101 and 14 CFR Part 207 by performing flights pursuant to a long-term wet lease for which it had not received prior Department approval;
3. We order Millon Air, Inc., to cease and desist from further violations of 49 U.S.C. §41101 and 14 CFR Part 207, as described above;
4. Millon Air, Inc. (Millon), is assessed \$60,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraph 2 of this order. Of this amount, \$2,000 shall be paid within 15 days of the date of issuance of this order. Twelve (12) additional payments of \$1,500 each will be due as follows: the first such payment will be due 30 days after the date of issuance of this order; additional payments of \$1,500 will be due every 30 days thereafter for 11 months. The remaining \$40,000 shall be suspended for one year following the issuance of this order and shall be forgiven unless Millon fails to comply with the payment provisions of this order or commits other violations of 14 CFR Part 207, 49 U.S.C. §41101 or this order during the year following issuance of this order, in which case the entire unpaid portion of the \$60,000 assessed penalty shall become due and payable immediately; and
5. Payments shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed wire," to the account of the U. S. Treasury in accordance with the attached instructions. Failure to pay the penalty as ordered will subject Millon to assessment of interest, penalty and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

This order will become a final order of the Department 15 days after its service unless (1) a timely petition for review is filed or (2) the Department takes review on its own motion.

By:

JOHN J. MATHIAS
Chief Administrative Law Judge

(SEAL)